



USAPDA



INTRO TO THE PDES/SENIOR ADJUDICATORS COURSE

Eligibility for the Duty-Related Process (MEB + PEB)

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Introduction to the PDES/Senior Adjudicators Course

Eligibility for the Duty-Related Process

Session Objectives

- To identify those circumstances that make a Soldier eligible for the duty-related process (MEB + PEB).
- To know the precedence of disability evaluation to other admin separation actions.
- To understand the rules that govern whether a Soldier identified with a pre-existing condition within the first six months of AD is entitled to MEB/PEB or subject to involuntary separation for failure to meet accession standards.
- To identify those circumstances that allow a Soldier to waive referral to all or part of the PDES.
- Related to the above, identify who, when, and how a Soldier can waive a PEB but be separated for disability without entitlement to benefits (AR 635-40, chapter 5).
- To understand the impact of the “25-day” orders language and 10 USC 1206a on the eligibility of mobilized RC Soldiers for MEB/PEB when identified with a “pre-existing” condition within 30 days of mobilization.
- To reflect understanding of session objectives by successfully completing two practical exercises.



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Eligibility for the Duty-Related Process

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- #5. Meaning of “Duty-Related Process.”**
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- #19. Release of Mobilized RC due to EPTS (25-day Order’s Language).**
- #20. Release of Mobilized RC due to EPTS (10 USC 1206a).**
- #21. PE: Is Soldier Eligible for the duty-related process?**
- #22. PE: True/false**
- #23 - 26: Answer keys**



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References

- **DoDD 1332.38, Physical Disability Separation**
 - Part 2 addresses eligibility for referral for both duty related and nonduty related.
 - Encl 5 addresses medical impairments not constituting a disability for purposes of referral for disability evaluation.
- **AR 40-501, Standards of Medical Fitness**
 - Para 3-3 addresses referral for chronic conditions at end of a career.
 - Paras 3-35 and 3-36 addresses conditions that do not constitute disabilities for purposes of referral for disability evaluation.
 - Para 3-41 addresses miscellaneous conditions.
- **AR 635-40, Physical Evaluation for Retention, Retirement, or Separation**
 - Chap 4, Section 1, addresses eligibles/ineligibles in relation to other separation actions.
 - The DoDI "38" supersedes paras 8-1 and 8-2 reference eligibility of the RC to enter the PDES.
 - NDAA 05 amended 10 USC 1217 to cover US military academy cadets whose injury or disease was incurred after the passage of the act. (Act signed on 28 Oct 04; therefore disease or injury must have been incurred as of 29 Oct 2004.) Consequently, AR 635-40, para 1-4a is superseded by this law.
- **AR 635-200, Enlisted Separations**
 - Para 1-33, establishes the precedence of disability processing to administrative separation actions.
 - The reference to para 1-34b is an error; should be 1-33b.
- **AR 600-8-24, Officer Separations**
 - Para 1-22 and 1-23 address eligibility of officers pending other actions.
 - NOTE: 1-23b(4) is incorrect. Officer resigning for good of the service is ineligible because the officer is under charges in that situation.



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Eligibility for Duty-Related Process

Meaning of "Duty-Related Process"

- The phrase, “duty-related process” refers to one of two processes for disability evaluation by Physical Evaluation Boards (PEBs). The other process is called the nonduty related process.
- The duty-related process -
 - Is statute based.
 - Consists of a Medical Evaluation Board (MEB) to document the Soldier’s health status with reference to medical retention standards; and
 - Consists of a PEB to determine fit/unfit for purposes of retention/separation and entitlement to military disability benefits if determined unfit.
 - Generally, results in AR 635-40 [and pertinent section of 10 USC chapter 61] cited as the authority for separation or retirement.
- The nonduty-related process -
 - Results from DoD policy.
 - Omits the MEB.
 - Limits PEB adjudication to the issue of fit/unfit.
 - Results in the unfit Soldier being separated under RC regulations for medical disqualification.
- Problems with the phrases, “duty-related” and “nonduty-related.”
 - Must pay attention to the context in which the phrases are used. Is it referring to applicable process or to the actual impairment?
 - Illustration: An RC Soldier on extended AD generally is referred under the “duty-related process,” though impairment may be “nonduty-related.” Unless the EPTS condition is identified within 30 days of call to duty and he is released within 30 days, he gets the “duty related process.”



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Statutory Authorization for the Duty-Related Process

- **10 USC 1214:** “No member of the armed forces may be retired or separated for physical disability without a full and fair hearing if he demands it.”
 - The above law does not pertain to RC TPU/IRR members who are not on AD and who are medically disqualified for nonservice-connected impairments.
- Military disability law is divided into two categories of “duty”:
 - Regulars and members on active duty for more than 30 days (10 USC 1201 thru 1203).
 - Members on active duty for 30 days or less or on inactive-duty training (10 USC 1204 - 1206).
- “On active duty” refers to the “ordered period”—not the AD days served.



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Duty Statuses for Soldiers on Ordered AD of Plus 30 Days

10 USC 1201(c)

- **Member of a regular component entitled to basic pay.**
- **Other member of armed forces entitled to basic pay who is on ordered AD of plus 30 days, except an RC ordered to AD under 10 USC 10148 for failure to attend drill.**
- **Any other member on active duty but not entitled to basic pay due to—**
 - **Excess leave for emergency reasons, as determined by SA: or**
 - **Authorized absence to participate in an educational program.**
- **U.S. military academy cadets with an injury or disease incurred after the passage of NDAA 05 (impairment incurred as of 29 Oct 04).**

NOTE: Soldiers on ordered AD of more than 30 days whose medical impairment is determined to be

**LD-No (pre-existing condition or due to misconduct) remain eligible for referral to the PEB unless
misconduct separation or related adverse action is initiated.)**



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Duty Statuses for RC Soldiers not on Ordered AD or Plus

30 Days

10 USC 1204a(2) and 10 USC 1206(2)

- **Performing Inactive Duty Training (IDT) [to include for points only].**
- **Performing Annual Training (AT) or other ordered active duty (AD) of 30 days or less.**
- **While travelling directly to or from IDT.**
- **While remaining overnight immediately before IDT or between successive periods.**
 - **Disability must be incurred in the vicinity of the IDT.**
 - **National Defense Authorization Act (NDAA) for FY 03 deleted requirement for member to be outside reasonable commuting distance for purposes of disability retirement under 10 USC 1204 but not for purposes of disability separation under 10 USC 1206.**
- **While serving on funeral honors duty under 10 USC 12503 or 32 USC 115.**
 - **Includes travel to or from.**
 - **While remaining overnight at or in the vicinity.**



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Eligibility for Duty-Related Process

US Military Academy Cadets

- Until NDAA 05, cadets were explicitly excluded from coverage for military disability benefits by 10 USC 1217.
- NDAA 05 provided coverage, “but only with respect to physical disabilities incurred after the date of the enactment of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.”



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Eligibility for the Duty-Related Process

Ineligibles

- **Enlisted Soldiers with pre-existing conditions that are identified within the first 180 days of initial AD and which meet the medical retention standards of AR 40-501, chapter 3.**
- **AWOL.**
- **Pending dismissal or punitive discharge.**
- **Under investigation which could result in dismissal or punitive discharge. Regains eligibility when -**
 - **The investigation ends without charges.**
 - **The officer exercising proper court-martial jurisdiction dismisses the charges.**
 - **The officer exercising court-martial jurisdiction refers the charge for trial to a court-martial that cannot adjudge dismissal or punitive discharge.**
- **Resignation for the good of the service or separation in lieu of court-martial.**
- **Confined for civil offense. (If on bail, Soldier is eligible for MEB/PEB.)**
- **Medical impairment is a condition that does not constitute a disability.**
 - **See DoDI 1332.38, Encl 5 and AR 40-501, para 3-35 and 3-36.**
 - **Examples: Personality disorder, enuresis, airsickness.**
- **Enlisted who are processing under chapters which allow a characterization of service of "under other than honorable."**
 - **NOTE: They remain eligible for MEB, but not the PEB.**



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Eligibility for the Duty-Related Process

Enlisted Admin Separation Actions that Have Precedence over Referral to PEB



- **Enlisted Soldiers pending administrative separation under a chapter in AR 635-200 that authorizes a characterization of service of Under Other than Honorable Conditions (UOTH).**
 - Chapter 7: Fraudulent Enlistment.
 - Chapter 10: Discharge for the Good of the Service (in lieu of trial by court-martial).
 - Chapter 14: Misconduct.
 - Chapter 15: Homosexuality.
- **Ineligibility is based on what the chapter allows—not the characterization given.**
EX: A Soldier being separated for misconduct under AR 635-200, chapter 14 may be given a “general” characterization of service. He remains ineligible for referral to the PEB unless GCMCA suspends the separation action because chapter 14 allows a UOTH.



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Additional Points Concerning Enlisted Admin Sep Actions with Precedence

- **MEB must be done for chapters 7, 14, 15 per AR 635-200, para 1-33b.**
- **The MEB goes to the Soldier's GCMCA for decision on separation for misconduct or referral to the PEB.**
- **The GCMCA considers -**
 - **Is there a relationship between the medical condition and conduct?**
 - **Are there extenuating circumstances?**
- **If a Soldier has completed the PEB or HQUSAPDA review when adverse action is initiated, the PDA case is suspended pending GCMCA decision.**



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Officers Pending Administrative Separation Action

- **Officers pending an administrative separation which authorize a UOTH are dual processed to the SA for decision on disposition.**
- **NOTE: If officer is resigning for the good of the Service, no dual processing occurs.**
 - **Rationale: Officer is under investigation that could lead to dismissal.**
 - **Per AR 635-40, para 4-1, officer is ineligible.**
 - **AR 600-8-24 erroneously provides for dual processing.**



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Eligibility for Duty-Related Process

Enlisted Administrative Separation for EPTS Impairment Identified within 180 Days

- **EPTS:** Existed Prior to Term of Service ("civilian-incurred")
- **Accession standard period:** Enlisted Soldiers are subject to medical accession standards for the first six months of active duty (DoDD 6130.39 and AR 40-501, chap 2).
- **Impact:** Failure to meet accession standards subjects the enlisted Soldier to administrative separation under AR 635-200, para 5-11, Failure to Meet Procurement Standards.
- **Separation criteria:**
 - Soldier must meet medical retention standards.
 - The condition must be identified within the first six months of AD and the Entrance Physical Standards Board (EPSBD) must be convened within the first six months of AD. (AR 635-200, para 5-11a.)
 - EPSBD procedures are addressed at AR 40-400, para 7-11, but omit the time frame for convening the board.)
- **DoD disability policy:** DoD Instruction 1332.38 [page 28, para E3.P2.5.4] permits Soldier to contest "no aggravation" determination of the EPSBD to the PEB.
 - Above action is not addressed in Army regulations.



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Officers Identified with EPTS Impairment within 180 Days

- **Officers fall under retention standards once commissioned. No six-month period.**
- **Normally processed thru MEB/PEB.**
- **May resign under AR 600-8-24, para 3-9.**
- **May be eliminated under AR 600-8-24, para 4-2a(12).**



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Situations Allowing for Waiver of MEB/PEB or PEB

- **Soldier may waive when completion of the MEB or PEB would take member past date of ETS or an approved retirement, and the Soldier doesn't consent to retention.**
 - Exception: Soldier is separating under a voluntary program that requires a Reserve obligation. (EX: The drawdown Special Separation Benefit or Voluntary Separation Incentive.)
- **Soldier is approved for a voluntary administrative separation (Ex: Hardship).**
- **The MEB on an enlisted Soldier opines that the member's medical impairment is EPTS without permanent service aggravation.**
 - Note: The impairment falls below medical retention standards.
 - Note: It is the PEB, not the MEB, being waived.
 - Separation is for physical disability without entitlement to benefits.
 - Authority is AR 635-40, chapter 5.
- **The MEB on an officer opines that impairment is EPTS without permanent aggravation.**
 - Must be approved by ASA(M&RA) because the separation action is not addressed in AR 600-8-24 or AR 635-40 but authorized under DoD 1332.38, para E3.P2.7.1 (page 29).
- **Mobilized RC can waive retention on AD and have MEB/PEB completed from REFRAD status.**
 - Would not be covered under the 8-year provision of 10 USC 1207a should PEB determine that condition was hereditary or otherwise EPTS.
- **Note: An RC Soldier who accepts RC Medical Retention Processing cannot opt out of the initial period for which retained. (He could request as an exception to policy. See most current G-1 guidance.)**



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Retention on AD/RC Active Status for Completion of Disability Evaluation

- Pertinent statutory cites are in terms of “may be” retained.
 - Officers pending mandatory retirement: **10 USC 640**.
 - RC officers at mandatory retirement or separation: **10 USC 14519**.
 - Enlisted at expiration of enlistment: **10 USC 507**.
 - Extension of or placement on AD: **10 USC 1074A** and **10 USC 12301(h) (1)**.
- Generally, Army policy to retain if member consents.
 - **AR 635-200, para 1-26 (enlisted)**.
 - **AR 600-8-24, para 1-23 (officers)**.



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Eligibility for Duty-Related Process

Retention on AD of Retiree Recalls for Disability Evaluation

- Inequity in law exists between active service retiree recalls and nonregular service retiree recalls reference retention for medical care or physical disability evaluation.
- No statutory authority to extend for MEB/PEB a Regular Army or RC Retiree Recall who retired from “active service” (AD).
 - The recall law for active service retirees is 10 USC 688.
 - 10 USC 688 (c) specifies the duties of a regular retiree recall as, “duties as the Secretary considers necessary in the interests of national defense.”
 - PDES evaluation does not constitute, “duties...in the interests of national defense.”
- Nonregular retirees may be extended under the provisions of 10 USC 12301(h) (1) for purposes of medical care or MEB/PEB.
- Issue is pertinent because -
 - Greater retired pay results if member is determined unfit for disability incurred or aggravated during recall period which is rated at a percentage higher than the member’s length of service percentage.
 - Tax break if the unfitting condition is “combat-related.”
 - Other Civil Service-related benefits may result.



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Eligibility for Non Duty-Related Process

25-Day Order's Language for Mobilized RC

- 24 Oct 03, ASA(M&RA) announced language approved by Army OGC and OTJAG.

"Pursuant to Presidential Executive Order of [date], you are relieved from your present Reserve Component status and are ordered to report for a period of active duty not to exceed 25 days for mobilization processing. Proceed from your present location in sufficient time to report by the date specified. If upon reporting for active duty you fail to meet deployment medical standards (whether because of a temporary or permanent medical condition), then you may be released from active duty, returned to your prior Reserve status, and returned to your home address, subject to a subsequent order to active duty upon resolution of the disqualifying medical condition. If, upon reporting for active duty, you are found to satisfy medical deployment standards, then you are further ordered to active duty for a period not to exceed () days, such period to include the period (not to exceed 25 days) required for mobilization processing."

- **Impact:** If released, member becomes subject to the nonduty-related process.



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NDAA Addition of 10 USC 1206a

1206a. Reserve component members unable to perform duties when ordered to active duty: disability processing

(a) MEMBERS RELEASED FROM ACTIVE DUTY WITHIN 30 DAYS.—A member of a reserve component who is ordered to active duty for a period of more than 30 days and is released from active duty within 30 days of commencing such period of active duty for a reason stated in subsection (b) shall be considered for all purposes under this chapter to have been serving under an order to active duty for a period of 30 days or less.

(b) APPLICABLE REASONS FOR RELEASE.—Subsection (a) applies in the case of a member released from active duty because of a failure to meet -

(1) physical standards for retention due to a preexisting condition not aggravated during the period of active duty; or

(2) medical or dental standards for deployment due to a preexisting condition not aggravated during the period of active duty.

(c) SAVINGS PROVISION FOR MEDICAL CARE PROVIDED WHILE ON ACTIVE DUTY. - Notwithstanding subsection (a), any benefit under chapter 55 of this title received by a member described in subsection (a) or a dependent of such member before or during the period of active duty shall not be subject to recoupment or otherwise affected."

Impact: Member becomes subject to the "nonduty related process."



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PE: Is Soldier eligible for the duty-related process?

- **Soldier's injury is due to own misconduct (LD-no).**
- **Enlisted Soldier is pending separation for unsatisfactory duty performance (chapter 13).**
- **Enlisted Soldier is identified the second day of basic training with an EPTS condition that falls below the medical retention standards of AR 40-501, chapter 3.**
- **Enlisted Soldier is pending separation for misconduct (chapter 14) with a general characterization of service.**
- **Officer is pending elimination for misconduct with a UOTH.**
- **Soldier is on terminal leave.**
- **Soldier is bed-wetter.**
- **RC Troop Program Unit member (TPU) and not on active duty is diagnosed with diabetes requiring oral medication.**
- **Soldier struck his First Sergeant.**
- **Soldier is out of civilian jail on bail for commission of a civilian criminal offense.**



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PT5: Duty-Related Process: List true or false for each statement

1. "Duty-related process" means the Soldier has a MEB to document his/her medical status.
2. "Duty-related process" means the Soldier will be entitled to disability compensation if determined unfit.
3. An RC Soldier on his 60th day of mobilization is identified with a hereditary condition is ineligible for the "duty-related process."
4. An enlisted Soldier completed the MEB/PEB and was issued disability retirement orders. While awaiting the retirement date, he commits an action that results in his command initiating chapter 14 action.
Because his disability case was completed and approved for the Secretary of the Army, the disability disposition takes precedence over the chapter 14 action.
5. An enlisted Soldier is pending a MEB when he commits an action that causes his command to initiate chapter 14 action. The Soldier is ineligible for the MEB.
6. An officer's request to resign for the good of the service is approved. Before separation, he is determined to fall below medical retention standards. He is eligible for referral to a MEB and PEB.



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PE: Is Soldier eligible for the duty-related process?

Answer Key

- Soldier's injury is due to own misconduct (LD-no).
Yes. If no chapter 14 pursued, the DES is the only means to separate the Soldier for an unfitting medical condition.
- Enlisted Soldier is pending separation for unsatisfactory duty performance (chapter 13).
Yes. The lowest characterization authorized for a chapter 13 is "general." Only those chapters which allow for a "UOTH" make the Soldier ineligible until the GCMCA suspends that action.
- Enlisted Soldier is identified the second day of basic training with an EPTS condition that falls below the medical retention standards of AR 40-501, chapter 3.
Yes. Per AR 40-501, para 3-3, Soldiers with conditions listed in chapter 3 must be referred to MEB/PEB.
- Enlisted Soldier is pending separation for misconduct (chapter 14) with a general characterization of service.
No. The fact that a chapter 14 allows an UOTH makes the Soldier ineligible until the GCMCA suspends the separation action. If the GCMCA suspends, and the PEB finds the Soldier "fit," the misconduct separation action proceeds.



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PE: Is Soldier eligible for the duty-related process?

- Officer is pending elimination for misconduct with a UOTH.
Yes. Officers are treated differently than enlisted Soldiers. Officers are dual-processed. If officer is found unfit, the Secretary of the Army determines the disposition.
- Soldier is on terminal leave.
Yes. The Soldier is still on active duty.
- Soldier is bed-wetter.
No. Must check the standards in AR 40-501, para 2-28 and 2-29 and DoDI 1332.38, Encl 5. This situation is not a disability. The Soldier will be administratively separated for the convenience of the government if situation interferes with duty, etc.
- RC Troop Program Unit member (TPU) and not on active duty is diagnosed with diabetes requiring oral medication.
No. This would be considered not-in-the-line-of-duty. Soldier is not eligible for the duty-related process (MEB/PEB) because he is not on AD and the condition is "civilian-incurred.". Soldier is eligible for the nonduty related process (solely a PEB fitness determination.)
- Soldier struck his First Sergeant.
No. Soldier would be under investigation for an offense that could result in a bad conduct discharge. Per AR 635-40, para 4-1, he is ineligible for MEB and PEB.
- Soldier is out of civilian jail on bail for commission of a civilian criminal offense.
Yes. See para 4-1b. This provision may change in the complete revision of AR 635-40.



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Duty-Related Process – List true or false for each statement

Answer Key

1. **True.** “Duty-related process” means the Soldier has a MEB to document his/her medical status.

Explanation: MEB/PEB are the component parts of the duty-related process.

2. **False.** “Duty-related process” means the Soldier will be entitled to disability compensation if determined unfit.

Explanation: The duty-related process includes a determination of whether the member is entitled to disability compensation. “Separate without entitlement to benefits” is a potential outcome. The nonduty-

related process does not include a determination of entitlement to disability benefits.

3. **False.** An RC Soldier who is on his 60th day of mobilization when identified with a hereditary condition

is ineligible for the “duty-related process.”

Explanation: Yes because he has exceeded the 25-day orders language; is past the period designated in 10

USC 1206a; and is on extended AD.

4. **False.** An enlisted Soldier completed the MEB/PEB and was issued disability retirement orders. While

awaiting the retirement date, he commits an action that results in his command initiating chapter 14 action.

Because his disability case was completed and approved for the Secretary of the Army, the disability disposition takes precedence over the chapter 14 action.

Explanation: Soldiers are subject to misconduct separation while awaiting disability disposition. Otherwise,

Discipline would be undermined.



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Duty-Related Process – List true or false for each statement

Answer Key

5. **False.** An enlisted Soldier is pending a MEB when he commits an action that causes his command to

initiate chapter 14 action. The Soldier is ineligible for the MEB.

Explanation: AR 635-200, para 1-33b requires the MEB to be forwarded to the GCMCA. The GCMCA must consider whether there is a relationship between the medical impairment and misconduct.

6. **False.** An officer's request to resign for the good of the service is approved. Before the separation, he

is determined to fall below medical retention standards. He is eligible for referral to a MEB and PEB.

Explanation: To be in this situation, the officer has to be under charges. Therefore, he is ineligible under

the provisions of AR 635-40, para 4-1. AR 600-8-24 is in error in providing for dual processing in this instance.